

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JUAN LUNA,
Plaintiff,

v.

LINDA MOOD, et al.,
Defendants.

Case No. 2:24-cv-01199-JAD-EJY

ORDER

Pending before the Court is Plaintiff Juan Luna's application to proceed *in forma pauperis* ("IFP") and Civil Rights Complaint. ECF Nos. 1, 4. The IFP application is granted. The Complaint is allowed to proceed in part and is dismissed in part without prejudice and with leave to amend.

I. Screening Standard

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act, a federal court must dismiss a prisoner's claim, if "the allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under § 1915

1 when reviewing the adequacy of a complaint or an amended complaint. When a court dismisses a
2 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions
3 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies
4 could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

5 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *Chappel v. Lab.*
6 *Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is proper
7 only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would
8 entitle him or her to relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this
9 determination, the court takes as true all allegations of material fact stated in the complaint, and the
10 court construes them in the light most favorable to the plaintiff. *Warshaw v. Xoma Corp.*, 74 F.3d
11 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less stringent standards
12 than formal pleadings drafted by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard
13 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than
14 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic
15 recitation of the elements of a cause of action is insufficient. *Id.*

16 Further, a reviewing court should “begin by identifying pleadings [allegations] that, because
17 they are no more than [mere] conclusions, are not entitled to the assumption of truth.” *Ashcroft v.*
18 *Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework of a
19 complaint, they must be supported with factual allegations.” *Id.* “When there are well-pleaded
20 factual allegations, a court should assume their veracity and then determine whether they plausibly
21 give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim
22 for relief ... [is] a context-specific task that requires the reviewing court to draw on its judicial
23 experience and common sense.” *Id.*

24 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte*
25 if the prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on
26 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or
27 claims of infringement of a legal interest which clearly does not exist), as well as claims based on
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1 fanciful factual allegations (e.g., fantastic or delusional scenarios). *Neitzke v. Williams*, 490 U.S.
 2 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

3 **II. Discussion**

4 Plaintiff asserts an Eighth Amendment violation based on Defendants alleged failure to
 5 properly address a letter so that Plaintiff “would have to go straight to the Mexico jail” because he
 6 would not have documentation of his right to remain in the U.S. ECF No. 1 at 6. Plaintiff further
 7 states this was discriminatory conduct on the basis of his national origin-Mexican and a violation of
 8 the Equal Protection Clause of the Fourteenth Amendment.

9 Plaintiff fails to state an Eighth Amendment claim. Plaintiff also fails to state an Equal
 10 Protection claim against Defendant Stutzman. Plaintiff’s Equal Protection claim against Defendant
 11 Mood may proceed

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
 13 the violation of a right secured by the Constitution or laws of the United States, and (2) that the
 14 alleged violation was committed by a person acting under color of state law. *West v. Atkins*, 487
 15 U.S. 42, 48 (1988). “The Eighth Amendment prohibits cruel and unusual punishment in penal
 16 institutions.” *Wood v. Beauclair*, 692 F.3d 1041, 1045 (9th Cir. 2012). Whether a specific act
 17 constitutes cruel and unusual punishment is measured by “the evolving standards of decency that
 18 mark the progress of a maturing society.” *Hudson v. McMillian*, 503 U.S. 1, 8 (1992). A prison
 19 official violates the Eighth Amendment when he acts with “deliberate indifference” to the serious
 20 medical needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth
 21 Amendment violation, a plaintiff must satisfy both an objective standard—that the deprivation was
 22 serious enough to constitute cruel and unusual punishment—and a subjective standard—deliberate
 23 indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012). Here, Plaintiff asserts no
 24 allegations regarding medical needs or the response to those needs. He alleges no failure to act or
 25 actions relating to such needs. As such, Plaintiff does not state an Eighth Amendment claim.

26 To state a violation of the Equal Protection Clause, a plaintiff must show that the defendant
 27 acted with an “intent or purpose to discriminate against the plaintiff based upon membership in a
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1 protected class.” *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013). That is, a plaintiff must
2 show that the defendant acted in a “discriminatory manner” and that the discrimination was
3 “intentional.” *Bingham v. City of Manhattan Beach*, 341 F.3d 939, 948 (9th Cir. 2003). “Intentional
4 discrimination” means that a defendant acted “at least in part because of a plaintiff’s protected
5 status.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003).

6 Plaintiff alleges he asked Linda Mood to send personal documents to his home, but that due
7 “to deliberate indifference and discrimination and racists [sic] to Mexicans ... [she] purposely wrote
8 down the wrong address so [that] Plaintiff” would go directly to a Mexican jail. Plaintiff further
9 alleges that, through the grievance procedure he submitted a grievance to Tim Stutzman “Chief of
10 Unit Manager[s]” who responded to the grievance that it was Plaintiff who completed the envelope
11 to which the mail was to be sent.

12 To the extent Plaintiff is attempting to hold Defendant Stutzman responsible for
13 discriminatory conduct, Plaintiff fails to state a claim as only those individual officials who actually
14 engaged in unlawful conduct can be held liable. *See Monell v. Dep’t of Social Servs.*, 436 U.S. 658,
15 690 (1978) (rejecting concept of respondeat superior liability in § 1983 context and requiring
16 individual liability for constitutional violation); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
17 (holding personal participation required for finding of supervisory liability based on alleged
18 constitutional violations). Further, failure of Defendant Stutzman to properly process Plaintiff’s
19 grievance does not state either a cognizable Eighth or Fourteenth Amendment claim. *Ramirez v.*
20 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.), *cert.*
21 *denied*, 488 U.S. 898 (1988)). Due process is not violated simply because a defendant fails to process
22 grievances submitted for consideration. *See id.*; *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir.
23 1993) (prison grievance procedure “does not confer any substantive right upon the inmates” and thus
24 “does not give rise to a protected liberty interest requiring the procedural protections envisioned by
25 the fourteenth amendment.”). For these reasons the Court dismisses Plaintiff’s claims against
26 Defendant Stutzman without prejudice and with one opportunity to amend to state a viable claim.

27 With respect to Plaintiff’s claims against Defendant Mood, Plaintiff alleges he was singled
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1 out by Ms. Mood because he is Mexican. Plaintiff says the conduct was intentional in an effort to
 2 prevent Plaintiff from obtaining documentation demonstrating he should not be sent to Mexico. The
 3 Court could find no case law recognizing the failure to properly address an envelope, even if
 4 intentional, being sent by a prisoner to his home—as opposed to the courts—as one stating a
 5 constitutional claim. However, the Court finds Plaintiff alleges facts sufficient (albeit this is a close
 6 call) to state a violation of equal protection based on a class of one. *Vill. of Willowbrook v. Olech*,
 7 528 U.S. 562, 564 (2000) (per curiam) (facts sufficient to state a plausible “class of one” claim
 8 include that the plaintiff was intentionally discriminated against as a member of a protected class or
 9 was intentionally treated differently from others similarly situated, without a rational basis for the
 10 different treatment.).

11 **III. Order**

12 IT IS HEREBY ORDERED that Plaintiff’s application to proceed *in forma pauperis* (ECF
 13 No.4) is GRANTED.

14 IT IS FURTHER ORDERED that Plaintiff’s Equal Protection Clause claim alleged against
 15 Linda Mood may proceed.

16 IT IS FURTHER ORDERED that under 28 U.S.C. § 1915, as amended by the Prison
 17 Litigation Reform Act, the Nevada Department of Corrections will forward payments from the
 18 account of Juan Luna, #54269048, to the Clerk of the United States District Court, District of
 19 Nevada, at a rate of 20% of the preceding month’s deposits (in months that the account exceeds
 20 \$10.00) until the full \$402 filing fee has been paid for this action. The Clerk of the Court will **SEND**
 21 a copy of this Order to (1) the Finance Division of the Clerk’s Office and (2) to the attention of the
 22 Chief of Inmate Services for the Nevada Department of Corrections at formapauperis@doc.nv.gov.
 23 In the event that this action is dismissed, the filing fee must still be paid pursuant to 28 U.S.C. §
 24 1915(b)(2).

25 IT IS FURTHER ORDERED that the Clerk of the Court must electronically **SERVE** a copy
 26 of this Screening Order and a copy of Plaintiff’s Complaint (ECF No. 1) on the Office of the Attorney
 27 General of the State of Nevada by adding the Attorney General of the State of Nevada to the docket
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1 sheet. This does not indicate acceptance of service.

2 IT IS FURTHER ORDERED that within 21 days of the entry of this Screening Order, the
3 Attorney General's Office must file a notice advising the Court and Plaintiff whether the Office
4 accepts service on behalf of Ms. Mood. If the Attorney General's Office does not accept service, it
5 **must** file Ms. Mood's last-known-address, under seal.

6 IT IS FURTHER ORDERED that if service cannot be accepted for Ms. Mood, Plaintiff **must**
7 file a motion requesting issuance of a summons and specifying a full name and address for this
8 defendant.

9 IT IS FURTHER ORDERED that if the Attorney General's Office accepts service of process
10 for Ms. Mood, such defendant must file and serve an answer or other response to the Complaint
11 (ECF No. 1) within 60 days from the date of this Order.

12 IT IS FURTHER ORDERED that Plaintiff's claims against Defendant Stutzman are
13 dismissed without prejudice. If he chooses to do so, Plaintiff has through and including **October**
14 **31, 2024** to file an amended complaint to attempt to state claims against Defendant Stutzman. The
15 amended complaint **must** state all claims Plaintiff wishes to bring against all Defendants (including
16 those against Defendant Linda Mood) he seeks to sue. Plaintiff is advised that if he files an amended
17 complaint, that amended complaint will supersede (essentially nullify) Plaintiff's original Complaint
18 and nothing in the original Complaint (even the claim the Court has allowed to go forward in this
19 Order) will continue to be an active claim if it is not asserted in an amended complaint.

20 IT IS FURTHER ORDERED that if Plaintiff does not file an amended complaint, the original
21 Complaint will be the operative complaint and Plaintiff's claim against Defendant Linda Mood will
22 proceed in litigation.

23 Dated this 30th day of September, 2024.

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25 
26 ELAYNA J. YOUCHAK
27 UNITED STATES MAGISTRATE JUDGE
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